

REMARKS

This responds to the Office Action dated on June 16, 2005, and the references cited therewith.

Claim 23 is amended; claims 1-4 and 7-23 are pending in this application. Claim 23 is amended only to correct claim dependency. No new matter is entered.

Double Patenting Rejection

Claims 1-4 and 7-23 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of co-pending Application No. 10/146,168.

Co-pending U.S. Patent Application Serial No. 10/146,168 has not yet received any final indication of allowed claims. The Applicants request that the claims of the instant patent application be allowed to issue without a Terminal Disclaimer, and that the issued claims of the instant application be compared to the claims of the cited co-pending application to determine if a judicially-created non-statutory double patenting rejection is required. If so, the Applicants will submit a Terminal Disclaimer to obviate any remaining double patenting rejections upon closing prosecution on the merits for the co-pending application, as needed, or in the alternative, upon receiving an indication of allowance for the relevant claims in the instant application.

Reservation of the Right to Swear Behind References

Applicants maintain their right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

§ 102 Rejection of the Claims

Claims 1-4 and 7-23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Schwartz et al. (U.S. Patent No. 6,661,879, "Schwartz"). Applicants respectfully traverse the rejection. To anticipate a claim, the reference must teach every element of the claim. *M.P.E.P.*

§2131. Also, claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. 37 C.F.R. § 1.75(c).

Regarding claims 1-4, 7-9:

The Applicants cannot find in Schwartz, among other things, automatically temporarily storing voice data representing the voice session in a memory buffer device in a storage server, wherein the temporary storing is automatically initiated upon the establishment of the voice session, and instructing the telephone recording device to store the voice data, wherein the instruction can occur at any time during the voice session so long as the voice session has not been terminated, and wherein the instruction to store the voice data is initiated by a user of the telephone recording device during the voice session, as recited or incorporated into the claims.

The cited portions of Schwartz refer to the content of the phone call recorded by the central archive facility upon initiation or receipt of the call (*see* col. 10 lines 42-43). Schwartz further discusses where two or more parties are engaged in a conversation and one party invokes the archive/recording process, that the archive facility determines whether the archiving of the telephone conversation is permitted before recordation of the conversation commences (*see* col. 11, lines 19-53). Thus, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call, and therefore Schwartz does not teach every element recited or incorporated into the claims.

Regarding claims 10-15:

The Applicants cannot find in Schwartz, among other things, a save initiator for dynamically initiating the voice data recording during the voice session, wherein the recording can be started by a user at any time during the voice session, and wherein the recording saves the entire voice session by copying the voice data from the memory buffer to the storage server, as recited or incorporated into the claims.

As discussed previously, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call. Therefore, Schwartz does not teach every element recited or incorporated into the claims.

Additionally, the Applicants cannot find,

a storage server connected to the local switch device for saving the voice data sent by the telephone recording device, wherein the telephone recording device

processes and transmits the voice data to the storage server through the local switch device,
as recited or incorporated into the claims.

The Office Action states that the central archive facility of Schwartz can be read as a telephone recording device, and that the storage medium (22) and personal computer (26) of Schwartz can be read as a storage server (*see* Office Action page 5). If the central archive facility of Schwartz is read this manner then the storage medium or personal computer are not connected to a local switch device and the device in Schwartz does not transmit voice data to a storage server through a local switch device. Thus, Schwartz does not contain any disclosure of the structure recited or incorporated into the claims, and Schwartz does not teach every element recited or incorporated into the claims.

Regarding claim 16:

The Applicants cannot find in Schwartz, among other things,
a save initiator on the telephone recording device for dynamically initiating the voice data recording at any time during the voice session, wherein the voice data represents the voice session from the beginning of the voice session,
as recited in claim 16.

As discussed previously, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call. Therefore, Schwartz does not teach every element recited in claim 16.

Regarding claim 17:

The Applicants cannot find in Schwartz, among other things,
a save initiator for dynamically initiating the voice data recording during the voice session in real time in response to user input received at any time during the voice session, wherein the recorded voice data represents the voice session from the beginning of the voice session,
as recited in claim 17.

As discussed previously, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call. Therefore, Schwartz does not teach every element recited in claim 17.

Additionally, Applicant cannot find in Schwartz,

a telephone recording device connected to a first local switch device, a storage server connected to the first local switch device for saving the voice data sent by the telephone recording device, wherein the telephone recording device processes and transmits the voice data to the storage server through the first local switch device,
as recited in the claim.

Schwartz teaches a storage medium (22) connected to the central archive facility (*see* Figs.) and does not contain any disclosure of the structure recited in claim 17, and Schwartz does not teach every element recited in the claim.

Regarding claims 18-21:

The Applicants cannot find in Schwartz, among other things,
a save initiator for dynamically initiating the voice data recording after a voice session is established between the telephone recording device and the communication device, wherein the voice data is a representation of the entire voice session, and wherein the save initiator is configured to initiate the recording in response to user input received at any time until the voice session is terminated,
as recited or incorporated into the claims.

As discussed previously, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call. Therefore, Schwartz does not teach every element recited or incorporated into the claims.

Regarding claims 22-23:

The Applicants cannot find in Schwartz, among other things,
temporarily saving voice data representing the entire session in a memory buffer of the telephone recording device, and instructing, by the user, during the session and before the session ends, the telephone recording device to store the temporarily saved voice data in a storage server connected to the local switch device,
as recited or incorporated into the claims.

As discussed previously, the device in Schwartz is apparently not able to record the entire voice session unless recording is requested at the beginning of the call. Therefore, Schwartz does not teach every element recited or incorporated into the claims.

Because Schwartz does not teach all the elements of the contested claims, Applicants respectfully request reconsideration and allowance of claims 1-4 and 7-23.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6909 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

KIRK BARKER ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6909

Date September 16, 2005

By Thomas F. Brennan
Thomas F. Brennan
Reg. No. 35,075

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16th day of September, 2005.

Lisa Posorske

Name

Lisa Posorske

Signature